

Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition.

< Rule not adopted >

Comment to 2012 Amendment

Federal Rule of Evidence 412 has not been adopted. *See* A.R.S. § 13-1421 (Evidence relating to victim's chastity; pretrial hearing).

§ 13-1421. Evidence relating to victim's chastity; pretrial hearing

A. Evidence relating to a victim's reputation for chastity and opinion evidence relating to a victim's chastity are not admissible in any prosecution for any offense in this chapter. Evidence of specific instances of the victim's prior sexual conduct may be admitted only if a judge finds the evidence is relevant and is material to a fact in issue in the case and that the inflammatory or prejudicial nature of the evidence does not outweigh the probative value of the evidence, and if the evidence is one of the following:

1. Evidence of the victim's past sexual conduct with the defendant.
2. Evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, disease or trauma.
3. Evidence that supports a claim that the victim has a motive in accusing the defendant of the crime.
4. Evidence offered for the purpose of impeachment when the prosecutor puts the victim's conduct in issue.
5. Evidence of false allegations of sexual misconduct made by the victim against others.

B. Evidence described in subsection A shall not be referred to in any statements to a jury or introduced at trial without a court order after a hearing on written motions is held to determine the admissibility of the evidence. If new information is discovered during the course of the trial that may make the evidence described in subsection A admissible, the court may hold a hearing to determine the admissibility of the evidence under subsection A. The standard for admissibility of evidence under subsection A is by clear and convincing evidence.

Cases

412.010 A defendant has the constitutional right to present a defense and to cross-examine witnesses, but is limited to evidence that is relevant.

State ex rel. Montgomery v. Duncan (Fries), 228 Ariz. 514, 269 P.3d 690, ¶¶ 5-8 (Ct. App. 2011) (38-year-old defendant was charged with four acts of oral sexual intercourse with 15-year-old victim; trial court ruled defendant could cross-examine victim about statement defendant alleged she made to him that she previously had oral sex with two other individuals; court held trial court erred in not balancing to determine whether there was a due process or other constitutional violation that would occur if evidence were precluded and thus remanded for trial court to make that determination; court further held cross-examining victim about her past sexual acts would not be relevant to show what defendant thought about victim's age, and

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thus held only evidence that might be relevant would be defendant's testimony (should he choose to testify) of how victim's alleged statements about prior acts of oral sex led him to conclude she was at least 18 years of age).

State v. Gilfillan, 196 Ariz. 396, 998 P.2d 1069, ¶¶ 17–23 (Ct. App. 2000) (court held A.R.S. § 13–1421, which requires trial court to conduct hearing to determine whether proposed evidence is relevant and that prejudicial effect does not outweigh the probative value, properly balances victim's right not to be confronted with irrelevant, prejudicial evidence with defendant's right to present relevant evidence and to cross-examine witness to develop relevant evidence).

412.020 The Arizona Legislature is permitted to enact statutory procedural rules that are reasonable and workable and that supplement the rules promulgated by the Arizona Supreme Court.

State v. Gilfillan, 196 Ariz. 396, 998 P.2d 1069, ¶¶ 24–28 (Ct. App. 2000) (court held A.R.S. § 13–1421, which prescribes when sexual assault victim's prior sexual conduct may be admitted in evidence, was reasonable and workable supplement to court's procedural rules and thus was permissible statutory rule of procedure).

412.030 The trial court has considerable discretion in determining whether proposed evidence is relevant and that prejudicial effect does not outweigh the probative value, thus the trial court's ruling will not be disturbed on appeal absent a clear abuse of the trial court's discretion.

State v. Dixon, 226 Ariz. 545, 250 P.3d 1174, ¶¶ 40–47 (2011) (defendant contended trial court erred in precluding entries from victim's diary, which he claimed contained victim's statement she had been sexually assaulted in Europe and would fight back if sexually assaulted again; court held statements had little probative value, thus trial court did not abuse discretion in precluding them).

State ex rel. Montgomery v. Duncan (Fries), 228 Ariz. 514, 269 P.3d 690, ¶¶ 5–8 (Ct. App. 2011) (38-year-old defendant was charged with four acts of oral sexual intercourse with 15-year-old victim; trial court ruled defendant could cross-examine victim about statement defendant alleged she made to him that she previously had oral sex with two other individuals; court held trial court erred in not balancing to determine whether there was a due process or other constitutional violation that would occur if evidence were precluded and thus remanded for trial court to make that determination; court further held cross-examining victim about her past sexual acts would not be relevant to show what defendant thought about victim's age, and thus held only evidence that might be relevant would be defendant's testimony (should he choose to testify) of how victim's alleged statements about prior acts of oral sex led him to conclude she was at least 18 years of age).

State v. Gilfillan, 196 Ariz. 396, 998 P.2d 1069, ¶¶ 29–33 (Ct. App. 2000) (court held defendant had not shown with clear and convincing evidence victim had made false allegations of sexual misconduct against another person).

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